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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,231	06/29/2001	Arturo A. Rodriguez	A-7259	9416

5642 7590 11/30/2006

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EXAMINER

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ART UNIT PAPER NUMBER

2623

DATE MAILED: 11/30/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/896,231
Filing Date: June 29, 2001
Appellant(s): RODRIGUEZ ET AL.

MAILED

NOV 30 2006

Technology Center 2600

Christopher D. Guinn
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11 September 2006 appealing from the Office action mailed 29 December 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2005/0071882	Rodriguez et al.	3-2005
5,555,441	Haddad	9-1996
5,414,455	Hooper et al.	5-1995

5,568,181	Greenwood et al.	10-1996
2004/0128685	Hassell et al.	7-2004
5,812,786	Seazholtz et al.	9-1998
2001/0013125	Kitsukawa et al.	8-2001
6,901,385	Okamoto et al.	5-2005
5,898,456	Wahl	4-1999
6,631,413	Aggarwal et al.	10-2003
5,172,413	Bradely et al.	12-1992
5,850,218	Lajoie et al.	12-1998
5,329,590	Pond	7-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 19, 20, 22, 23, 24, 62, 63, 64, 65, 67-69, 72, and 74 are rejected under 35 U.S.C. 102(e) as being anticipated by Rodriguez et al. (US Pat. Pub. No. 2005/0071882).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or (2) by an appropriate showing under 37 CFR 1.131.

As to claim 1, Rodriguez discloses a system comprising a memory, which is capable of downloading purchasable recordable media at various times. Also, the system is capable of dynamically reallocating excess capacity (Pars. 7, 36, 38, 39, 47, 48, 52, 53, 61, and 62). Accordingly, Rodriguez et al anticipate each and every limitation of claim 1.

Claim 63 corresponds to the system claim 1. Thus, it is analyzed and rejected as previously discussed.

As to claim 2, Rodriguez further teaches allocation of bandwidth based upon historical bandwidth consumption (Pars. 75 & 77). Accordingly, Rodriguez et al anticipate each and every limitation of claim 2.

As to claim 3, Rodriguez further teaches the allocation manager continually communicates with the network manager to dynamically allocate the bandwidth (i.e., allocates according to current consumption) (Par. 86). Accordingly, Rodriguez et al anticipate each and every limitation of claim 3.

As to claim 4, Rodriguez further teaches the use of encryption techniques (Par. 31). Accordingly, Rodriguez et al anticipate each and every limitation of claim 4.

As to claim 19, Rodriguez further teaches the system is in communication with a server (Par. 13). Accordingly, Rodriguez et al anticipate each and every limitation of claim 19.

As to claim 20, Rodriguez further teaches the system stores popular movies (i.e., high demand) in the server (Par. 73). Accordingly, Rodriguez et al anticipate each and every limitation of claim 20.

As to claim 22, Rodriguez further teaches the system downloads recordable media through the system server (Par. 13). Accordingly, Rodriguez et al anticipate each and every limitation of claim 22..

As to claim 23, Rodriguez further teaches downloading media during low-demand periods (i.e., off-peak periods) (Par. 77). Accordingly, Rodriguez et al anticipate each and every limitation of claim 23.

As to claim 24, Rodriguez further teaches downloading media during low-demand periods (i.e., off-peak periods) (Par. 77). Accordingly, Rodriguez et al anticipate each and every limitation of claim 24.

As to claim 62, Rodriguez further teaches billing the customer for the media content (Pars. 52 & 53). Accordingly, Rodriguez et al anticipate each and every limitation of claim 62.

As to claim 64, Rodriguez further teaches the use of a user interface (i.e., electronic programming guide). Accordingly, Rodriguez et al anticipate each and every limitation of claim 64.

As to claim 65, Rodriguez further teaches the use of multiple hub servers (Fig. 1). Accordingly, Rodriguez et al anticipate each and every limitation of claim 65.

As to claim 67, Rodriguez further teaches the use of download options (i.e., download times, fee schedules, etc.) (Par. 36). Accordingly, Rodriguez et al anticipate each and every limitation of claim 67.

As to claim 68, it is clear from the above-discussed portions of Rodriguez, that his system is capable of providing media content immediately (i.e., on demand).

Accordingly, Rodriguez et al anticipate each and every limitation of claim 68.

As to claim 69, Rodriguez further teaches the use of a calendar that lists various days in which programs can be downloaded (Par. 36). Therefore, it is inherent a user would be able to download content with latency because they can select a later date at which to download the program. Accordingly, Rodriguez et al anticipate each and every limitation of claim 69.

As to claim 72, the entire disclosure of Rodriguez is directed to a video on demand system (i.e., offers impulse purchasing of movies). Accordingly, Rodriguez et al anticipate each and every limitation of claim 72.

As to claim 74, Rodriguez further teaches the use of unused bandwidth during off-peak periods (Par. 64). Accordingly, Rodriguez et al anticipate each and every limitation of claim 74.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad (US Pat. No. 5,555,441) in view of Hooper et al (US Pat. No. 5,414,455).

Note: The following claims depend from claim 1. In consideration of 103(c), Haddad will be applied to reject the limitations of claim 1.

Accordingly, as to claim 1, Haddad discloses an audiovisual distribution system wherein recordable media can be downloaded at various times (Abstract; Col. 2, ln. 20-33). Haddad further teaches the system is capable of distributing the multimedia data at

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various times, such as off-peak hours, to more efficiently utilize the system hardware (i.e., reallocates excess infrastructure capacity) (Col. 2, In. 34-Col. 3, In. 5). Therefore, Haddad et al anticipate each and every limitation of amended claim 1.

Claim 63 corresponds to the system claim 1. Thus, it is analyzed and rejected as previously discussed

Claim 5 recite the system of claim 1, wherein the first processor downloads recordable media content at a higher bit rate that the real-time playback rates. As discussed above, Haddad anticipates each and every limitation of claim 1, but fails to teach the limitations of claim 5.

However, within the same field of endeavor, Hooper discloses a similar system wherein the media can be downloaded at a higher than real-time bit rate. (Col. 2, In. 41-48). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of appellant's invention to combine the systems of Haddad and Hooper in order to provide a system wherein the memory buffer is rapidly filled, so that requests to view program segments can be promptly filled.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad in view of Greenwood et al. (US Pat. No. 5,568,181).

Claim 6 recites the system claim 1, wherein the first processor downloads recordable media content at a lower bit rate than the real-time playback rate. As discussed above, Haddad anticipates each and every limitation of claim 6, but fails to disclose the limitation of claim 6.

However, within the same field of endeavor, Greenwood et al disclose a similar system wherein content is provided at a lower than real-time bit rate (Col. 3, Ln. 5-6 & Col. 8, Ln. 20-23). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of appellant's invention to combine the systems of Haddad and Greenwood in order to provide a system, which is capable of delivering media to a wide area at a reasonable cost via a relatively slow network.

Claims 7-18, 21, 26-50, and 53-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad in view of Hassell et al (US Pat. Pub. No. 2004/0128685) and further in view of Seazholtz et al. (US Pat. No. 5,812,786).

Claim 7 recites the system of claim 1, further comprising limitations too numerous to recite herein (please refer to claim sheet). As discussed above, Haddad anticipates each and every limitation of claim 1, and further discloses variable price, time, and download structures (Col. 2, Ln. 20-Col. 3, Ln. 5). But, Haddad fails to disclose the remaining limitations of claim 7.

However, within the same field of endeavor, Hassell et al disclose a similar system comprising a secondary storage device, a plurality of portable mediums, and a user interface (Abstract; Pars. 6-9). But, each reference fails to disclose variable download rates.

However, within the same field of endeavor, Seazholtz et al disclose a similar system wherein the user is allowed to download data at variable rates (Col. 2, Ln. 48-Col. 3, Ln. 20 & Col. 13, Ln. 63-Col. 14, Ln. 25). Accordingly, it would have been

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obvious to one of ordinary skill in this art at the time of appellant's invention to combine the systems of Haddad, Hassell, and Seazholtz in order to provide a system in which the user could build a program archive, wherein the user could selectively control the bit rate transmission of said programs.

[Note: The Examiner takes Official Notice that at the time of Appellant's invention, the use of buffers was well known in the art of telecommunications.] (See *Hooper*, US Pat. No. 5,414,555, Abstract & Col. 2, Ln. 8-15)

Claim 8 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Haddad further teaches the use of passwords to verify user identity before the media is transmitted (Col. 7, Ln. 44-48). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 8.

Claim 9 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Haddad further teaches the user has various price and download options which can be chosen by the user (Col. 2, Ln. 20 - Col. 3, Ln. 5). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 9.

Claim 10 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Haddad further

teaches the system is in connection with an audiovisual library, which provides videos when requested (i.e., on demand) (Col. 2, Ln. 9-Col.3, Ln. 5). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 10.

Claim 11 recites the system of claim 10, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 10, and Haddad further teaches the user is allowed to request immediate or delayed download and that prices will vary accordingly (Col. 2, Ln. 20 - Col. 3, Ln. 5). Based upon this teaching, it would have been obvious to charge more for immediate download, as suggested by Haddad. Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 11.

Claim 12 recites the system of claim 10, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 10, and Haddad further teaches the user is allowed to request immediate or delayed (i.e., extended) download (which could be placed at anytime, including peak time) and that prices will vary accordingly (Col. 2, Ln. 20 – Col. 3, Ln. 5). Based upon this teaching, it would have been obvious to allow for a reduced download price if the user requested a delayed download time. Moreover, the Examiner takes Official Notice that it was notoriously known in the art at the time of appellant's invention to charge less for extended download times. (As evidenced by Aggarwal et al, US Pat. No. 6,631,413, Col. 4, Ln.

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11-33). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 12.

Claim 13 recites the system of claim 10, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 10, and Haddad further teaches the system will allocate bandwidth (for example, shift demand from peak hours) in order to efficiently meet consumer requests (Col. 2, Ln. 20 - Col. 3, Ln. 5). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 13.

Claim 14 recites the system of claim 10, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 10, and Haddad further teaches the system will utilized off-peak bandwidth (i.e., shift demand to off-peak hours) in order to efficiently meet consumer requests (Col. 2, Ln. 20 - Col. 3, Ln. 5). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 14.

Claim 15 recites the system of claim 14, and further limitations which will not be recited (please refer to claim sheet). Also, as discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 10, and Haddad further teaches the system will shift most of the user demand to off peak hours and that prices would vary accordingly (Col. 2, Ln. 20 - Col. 3, Ln. 5). This disclosure does

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suggest charging the user a lower fee for off peak downloads. Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 15.

Claim 16 recites the system of claim 14, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 14, and Haddad further teaches the user is allowed to request immediate or delayed (i.e., extended) download and that prices will vary accordingly (Col. 2, Ln. 20 - Col. 3, Ln. 5). Based upon this teaching, it would have been obvious to allow for a reduced download price if the user requested a delayed download time. Moreover, the Examiner takes Official Notice that it was notoriously known in the art at the time of appellant's invention to charge less for extended download times. (As evidenced by Aggarwal et al, US Pat. No. 6,631,413, Col. 4, Ln. 11-33). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 16.

Claims 17 and 18 recite the system of claim 14, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 14, and Haddad further teaches the user is allowed to request immediate (as recited in claim 17) or delayed (as recited in claim 18) download (which could be placed at anytime, including peak time) and that prices will vary accordingly (Col. 2, Ln. 20 - Col. 3, Ln. 5). Based upon this teaching, it would have been obvious to allow for a reduced download price if the user requested a delayed download time. Moreover, the Examiner takes Official Notice that it was notoriously known in the art at the time of appellant's invention to

charge less for extended download times. (As evidenced by Aggarwal et al, US Pat. No. 6,631,413 Col. 4, Ln. 11-33). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claims 17 and 18.

Claim 21 recites the system of claim 19, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 19, and the Examiner takes Official Notice that it was notoriously known in the art at the time of Appellant's invention to store new releases in video servers. (*Bradely et al*, US Pat. No. 5,172,413 Column 7, Ln. 63-Col. 8, Ln. 11) Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 21.

Claim 26 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further discloses the use of a fast forward command (i.e., fast seek time), while Seazholtz further discloses the use of a high bit rate asymmetrical digital subscriber line (Hassell Par. 40 & Seazholtz Col. 1, Ln. 60-64). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 26.

Claim 27 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further discloses the system utilizes a hard disk memory (Par. 86). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 27.

Claim 28 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further discloses the system utilizes multiple portable media disks (Par. 9, 19, & 89). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 28.

Claim 29 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further teaches the system comprises a disc drive with write capability (Par. 19). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 29.

Claim 30 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further discloses the system utilizes multiple portable media disks (i.e., disk carousel) (Par. 9, 19, & 89). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 30.

Claim 31 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further teaches the system comprises a disc drive with write capability (Par. 19). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 31.

Claim 32 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further teaches the system comprises a multiple disc drive with write capability (Par. 19 & 89). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 32.

Claim 33 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Haddad further discloses the system utilizes encryption keys (Col. 5, Ln. 21-36). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 33.

Claim 34 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further teaches the system utilizes an out-of-band channel to transmit programming data (Par. 24). Based upon this disclosure, it would have been an obvious modification to use the out-of-band channel to also transmit program requests. Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 34.

Claims 35-38 recite the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Seazholtz further teaches the user is allowed to request media at a high and low bit rate (i.e., plurality of

bit rates), respectively (Col. 2, Ln. 47-64; Col. 3, Ln. 9-19; Col. 13, Ln. 63-Col. 14, Ln. 25). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claims 35-38.

Claim 39 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further discloses the user is allowed to choose video formats (i.e., quality content options) for storage. (Fig. 14). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 39.

Claim 40 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further discloses a plurality of recordable media screens. (Figs. 2-14). Moreover, the Examiner takes Official Notice that it was notoriously known in the art at the time to appellant's invention to provide the user with on-screen options to purchase media. (As evidenced by *LaJoie et al*, *US Pat. No. 5,850,218*). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 40.

Claim 41 recites the system of claim 40, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 40, and Haddad further teaches providing the user with various downloading and pricing options. (Col. 2, Ln.

20-Col. 3, Ln. 5). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 41.

Claim 42 recites the system of claim 41, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 41, and Haddad further teaches pricing media based upon the amount of time the user is on the system (i.e., bandwidth consumed), the time the user requests the program (i.e., time of day, week, etc), and the time the program will be downloaded (i.e., express delivery, long term, etc.). (Col. 2, Ln. 34-Col. 3, Ln. 5). The remainder of Appellant's limitations are obvious in light of the disclosed references recited herein. Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 42.

Claim 43 recites the system of claim 42, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 42, and Hassell further discloses the screen comprises pre-configured options. (Figs. 2-14). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 43.

Claim 44 recites the system of claim 43, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 43, and Hassell further discloses the use of an interactive programming guide. (Figs. 4-13). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 44.

Claim 45 recites the system of claim 44, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 44, and the Examiner takes Official Notice that it was notoriously known in this art at the time of appellant's invention to use icons in electronic programming guides. (As evidenced by *LaJoie 5,850,218* Col. 19, Ln. 29-38 and all Figures). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 45.

Claim 46 recites the system of claim 43, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 43, and Hassell further discloses the use of an interactive programming guide, which can also be considered a "service" guide. (Figs. 4-13). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 46.

Claim 47 recites the system of claim 46, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 46, and the Examiner takes Official Notice that it was notoriously known in this art at the time of appellant's invention to use icons in electronic programming guides. (As evidenced by *LaJoie 5,850,218* Col. 19, Ln. 29-38 and all Figures). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 47.

Claim 48 recites the system of claim 46, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of

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Haddad, Hassell, and Seazholtz disclose all limitations of claim 46, and Hassell further discloses the use of an interactive programming guide, which categorizes the guide into a recordable media group (i.e., separate service entities). (Fig. 4). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 48.

Claim 49 recites the system of claim 41, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 41, and the Examiner takes Official Notice that it was notoriously known in this art at the time of appellant's invention to provide the user with the on-screen option of purchasing programs. (As evidenced by *LaJoie 5,850,218* Fig. 28). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 49.

Claim 50 recites the system of claim 41, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 41, and Hassell further discloses the use of an interactive programming guide, which can be implemented from processes occurring within the set top box (i.e., subscriber network application). (Par. 21). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 50.

Claim 53 recites the system of claim 41, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 41, and Hassell further discloses the system will notify the user if the desired program is unavailable (i.e., the

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system will indicate that the user must insert another recordable media, thus indicating the program is presently unavailable on the inserted recordable media). (Par. 89). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 53.

Claim 54 recites the system of claim 53, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 53, and Haddad further discloses the system allows the user to choose purchase download options. (Col. 2, Ln. 20-Col. 3, Ln. 5). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 54.

Claim 55 recites the system of claim 41, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 41, and Hassell further discloses the use of parental controls. (Par. 94 & Fig. 14). In the system as disclosed by Hassell, it is inherent that the parent insert some form of pin/code authorization. Moreover, Haddad also discloses the use of customer passwords. (Col. 7, Ln. 44-58). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 55.

Claim 56 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Hassell further

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discloses the use of a remote control. (Par. 85). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 56.

Claim 57 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, and Haddad further discloses the system database stores customer billing records. (Col. 7, Ln. 20-48). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 57.

Claim 58 recites the system of claim 57, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 57, and Haddad further discloses the system database stores customer billing records and authorization codes. (Col. 7, Ln. 20-48). It is inherent this database communicate with the program server, in order to facilitate transmission of the programs. Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 58.

Claim 59 recites the system of claim 58, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 58, and Hassell further teaches the system utilizes an out-of-band channel to transmit programming data. (Par. 24). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 59.

Claim 60 recites the system of claim 57, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 57, and Haddad further discloses the system database stores customer billing records and authorization codes. (Col. 7, Ln. 20-48). It is inherent this database communicate with the program server, in order to facilitate transmission of the programs and that said communication occur periodically. Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 60.

Claim 61 recites the system of claim 60, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 60, and the Examiner takes Official Notice that it was notoriously known in this art at the time of appellant's invention to debit consumer accounts for various transactions (As evidenced by *Pond*, *US Pat. No. 5,329,590* Col. 8, Ln. 27-43). Therefore, the combined systems of Haddad, Hassell, and Seazholtz contain all limitations of claim 61.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad in view of Hassell and further in view of Seazholtz as applied to claim 7 above, and further in view of Kitsukawa et al. (US Pat. Pub. No. 2001/0013125).

Claim 25 recites the system of claim 7, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 7, but fail to disclose the

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limitation of claim 25. However, within the same field of endeavor, Kitsukawa et al disclose a similar system which is capable of printing coupons which may be redeemed by the user. (Par. 56). Based upon this disclosure, printing a receipt would have been an obvious modification. Accordingly, it would have been obvious to one of ordinary skill in this art at the time of appellant's invention to combine modify the combined systems of Haddad, Hassell, Seazholtz, and Kitsukawa in order to provide a video on demand system which allows the user to print receipts/coupons, thereby providing the user with an incentive to take advantage of broadcast advertisements.

Claims 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad in view of Hassell and further in view of Seazholtz as applied to claims 7, 40, and 41 above, and further in view of Okamoto et al. (US Pat. No. 6,901,385).

Claim 51 recites the system of claim 41, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 41, but fail to disclose the limitation of claim 51. However, within the same field of endeavor, Okamoto et al disclose a similar system in which recordable media is offered on a trial basis. (Abstract; Col. 1, Ln. 15-18; Col. 2, Ln. 19-43). Therefore, it would have been obvious to one of ordinary skill in this art at the time of appellant's invention to combine the systems of Haddad, Hassell, Seazholtz, and Okamoto in order to provide a system wherein the user is allowed to purchase a trial program, thereby providing the user with

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the opportunity to view the a portion of the media before choosing to buy the entire media.

Claim 52 recites the system of claim 41, and further limitations which will not be recited (please refer to claim sheet). As discussed above, the combined systems of Haddad, Hassell, and Seazholtz disclose all limitations of claim 41, but fail to disclose the limitation of claim 52. However, within the same field of endeavor, Okamota et al disclose a similar system in which recordable media is offered on a trial basis, while Haddad further discloses offering programming for a limited amount of time. (Okamota Abstract; Col. 1, Ln. 15-18; Col. 2, Ln. 19-43 & Haddad, Col. 2, Ln. 20-33). Therefore, the combined systems of Haddad, Hassell, Seazholtz, and Okamoto contain all limitations of claim 52.

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad in view of Wahl. (US Pat. No. 5,898,456).

Claim 66 recites the method of claim 63, and further limitations which will not be recited (please refer to claim sheet). As discussed above, Haddad anticipates each and every limitation of claim 63, but fails to disclose the limitation of claim 66. However, within the same field of endeavor, Wahl discloses a tiered distribution network, in which the system is capable of re-routing distributed media to another server if the original server is unavailable. (Col. 4, Ln. 5-32). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of appellant's invention to combine the

systems of Haddad and Wahl in order to provide a tiered distribution network, whereby system reliability would be enhanced.

[Note: As for the limitation of claim 65, which is incorporated into claim 66, Haddad teaches the use of a audiovisual library (i.e., demand server). (Col. 2, Ln. 20-33). In light of this disclosure, one or more servers would simply be an obvious design choice based upon the amount of storage capacity each server has. Therefore, Haddad contains the limitation of claim 65.]

Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad.

Claim 70 recites the method of claim 65, and further limitations which will not be recited (please refer to claim sheet). As discussed above, Haddad anticipates each and every limitation of claim 65, and further discloses pricing the media based upon bandwidth use (i.e., time of day, amount of time on system, etc.). (Col. 1, Ln. 46-Col. 3, Ln. 5). Although not explicitly discussed, this disclosure also suggests pricing based upon the availability of the server because higher prices could be charged if programs are requested during peak times (i.e., times when the server is more congested or less "available"). Therefore, the modified system of Haddad also discloses the limitation of claim 70.

Claim 71 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad in view of Okamoto et al.

Claim 71 recites the method of claim 63, and further limitations which will not be recited (please refer to claim sheet). As discussed above, Haddad anticipates each and every limitation of claim 63, but fails to disclose the limitation of claim 71. However, within the same field of endeavor, Okamoto et al disclose a similar system in which recordable media is offered on a trial basis. (Abstract; Col. 1, Ln. 15-18; Col. 2, Ln. 19-43). Therefore, it would have been obvious to one of ordinary skill in this art at the time of appellant's invention to combine the systems of Haddad and Okamoto in order to provide a system wherein the user is allowed to purchase a trial program, thereby providing the user with the opportunity to view the a portion of the media before choosing to buy the entire media.

Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haddad in view of Seazholtz.

Claim 73 recites the method of claim 63, and further limitations which will not be recited (please refer to claim sheet). As discussed above, Haddad anticipates each and every limitation of claim 63, but fails to disclose the limitation of claim 73. However, within the same field of endeavor, Seazholtz et al disclose a similar system in which media can be downloaded at variable bit rates. (Abst; Col. 1, Ln. 5-11; Col. 2, Ln. 48-64). Accordingly, it would have been obvious to one of ordinary skill in this art at the time of appellant's invention to combine the systems of Haddad and Seazholtz in order to provide a system in which the user could build a program archive, wherein the user could selectively control the bit rate transmission of said programs.

(10) Response to Argument

Appellant argues with respect to claims 1 and 63 that Rodriguez does not disclose downloading recordable media content at various times. However, reading the claims in the broadest sense, Rodriguez does meet the limitations of the claim. Rodriguez discloses a video on demand system that allows the user to download recordable media content at various times (See paragraph 0011).

Furthermore, appellant argues that Rodriguez fails to disclose recordable content. Appellant goes on to argue there is also no teaching of recording the downloading content. The Examiner agrees and disagrees, respectively.

Rodriguez does disclose the use of "recordable content." Throughout the reference, Rodriguez makes reference to video and related media. The Examiner interprets video as encompassing "*recordable* content." This logic is founded on the reasoning that, because video can be recorded---it is "recordable." Accordingly, Rodriguez teaches all limitations of Claim 1.

The Examiner agrees Rodriguez does not appear to teach the recording of video data. However, this is not claimed in Claim 1. Claim 1 only calls for the use of "recordable content" or video, not that said video be recorded. Thus, again, Rodriguez teaches all limitations of Claim 1.

Appellant also argues that Rodriguez does not disclose that the processor uses reallocated excess on-demand infrastructure capacity. However, reading the claims in the broadest sense, Rodriguez also meets this limitation. Rodriguez discloses that the

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system manages bandwidth and RF channel allocation by allocating bandwidth adaptively according to demand (See paragraph 0047).

Appellant further argues that Haddad does not disclose reallocating excess on-demand infrastructure capacity. However, reading the claims in the broadest sense, Haddad also meets this limitation. Haddad discloses that the system is capable of distributing the multimedia data at various times, such as off-peak hours, to more efficiently utilize the system hardware (i.e., reallocates excess infrastructure capacity) (Col. 2, In. 34 - Col. 3, In. 5). Instead of using the bandwidth during peak hours, the system of Haddad can reallocate that bandwidth to be used during off-peak hours, where there will be lower demand because of extra, or excess, bandwidth. Since the system of Haddad operates dynamically (i.e., user's can request video at anytime), the system is constantly allocating and reallocating bandwidth.

Appellant argues that there is a clear legal deficiency in the rejection of claims 15-18. The previous examiner in the Advisory Action addressed the oversight and informed the appellant that the limitations was addressed and received a second examination on the merits on page 8 of the Final Office action dated 12/29/2005. Page 8 of the Final Office action discussed how Haddad meets the limitations of using reallocated excess on demand infrastructure capacity. Claims 15-18 were rejected using Haddad as well.

Furthermore, Appellant traversed each Official Notice. The examiner cited prior-art to show that the features within the claims are well known in the art.

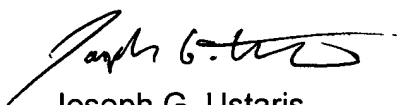
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,




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